

BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

In the Matter of:	)	
	)	
Burnishine Products Division,	)	Docket No. FIFRA-97-H-05
The Herbert Stanley Company,	)	
	)	
Respondent.	)	
	)	

CONSENT ORDER

The United States Environmental Protection Agency as Complainant, and Burnishine Products Division, The Herbert Stanley Company, as Respondent, the parties herein, having signed and consented to the entry of the Consent Agreement hereto attached and incorporated by reference into this Consent Order, and pursuant to Section 14(a) (4) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 1361(a) (4),

IT IS HEREBY ORDERED THAT:

1. Respondent Burnishine Products Division, The Herbert Stanley Company, shall comply with all of the terms of the Consent Agreement, incorporated herein by reference, and with the requirements set forth in FIFRA and its regulations thereunder;
2. Respondent is assessed a civil penalty in the sum of Four Thousand Dollars (\$4,000);
3. Respondent shall, within thirty (30) calendar days of the receipt of this signed Consent Agreement and Consent Order, submit to the Treasurer of the United States of America, a

payment in the amount of \$4,000 as described in the Consent Agreement.

4. This Order disposes of the proceeding pursuant to 40 C.F.R. Section 22.18(c) and shall become effective upon the execution of this Order by the Environmental Appeals Board.

IT IS SO ORDERED.

ENVIRONMENTAL APPEALS BOARD

Dated: *August 13, 1997*

By: \_\_\_\_\_  
Kathie A. Stein  
Environmental Appeals Judge

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ENVIRONMENTAL APPEALS BOARD

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ENVIRONMENTAL PROTECTION AGENCY

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In the Matter of )  
 )  
**Burnishine Products Division,** )  
**The Herbert Stanley Company** ) Docket No. FIFRA 97-H-05  
**Gurnee, Illinois,** )  
 )  
· Respondent. )  
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CONSENT AGREEMENT

The United States Environmental Protection Agency ("EPA" or "the Agency") as Complainant and Burnishine Products Division, The Herbert Stanley Company ("The Herbert Stanley Company") as Respondent, the Parties herein, having consented to the entry of this Consent Agreement and Consent Order before the taking of any testimony and without adjudication of any issues of law or fact herein, agree to comply with the terms of this Consent Agreement and the attached Consent Order.

I. PRELIMINARY STATEMENT

A. Respondent, The Herbert Stanley Company is the registrant of the pesticide product, Burnishine Germicidal Solution, EPA Registration No. 1130-1 5. Burnishine Germicidal Solution is registered for use as a disinfectant.

B. The Agency initiated this proceeding for the assessment of a civil penalty pursuant to Section 14(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, 7 U.S.C. § 1361 by issuing an administrative Complaint and Notice of Opportunity for

Hearing, dated April 23, 1997.

C. The Complaint, incorporated herein by reference, alleged that Helena failed to comply with the Good Laboratory Practice Standards (GLPS), 40 C.F.R. Part 160, in violation of Section **12(a)(2)(Q)** of FIFRA, 7 U.S.C. § **136j(a)(2)(Q)**, and proposed a penalty of \$5,000.

D. On May 12, 1997, The Herbert Stanley Company filed an Answer, incorporated herein by reference, and requested a hearing pursuant to **FIFRA** Section 14(a)(3), 7 U.S.C. § **136l(a)(3)**, and 40 C.F.R. § **22.15(c)**.

E. For the purposes of this proceeding, without trial or other actual litigation of the issues or any adjudication of the facts, The Herbert Stanley Company (1) admits that EPA has jurisdiction over the subject matter alleged in the complaint; (2) neither admits nor denies the Findings of Fact contained in the Complaint and this Consent Agreement; and (3) consents to the Terms of Settlement set forth in this Consent Agreement, and the Consent Order.

F. In recognition of the cooperation shown to the government by The Herbert Stanley Company and the willingness to settle this matter without **further** litigation, EPA agrees to mitigate the civil penalty assessment, set forth in the Complaint, as described in Section IV below.

G. This Consent Agreement shall be binding upon the parties and in **full** effect upon execution of the Consent Order by the EPA Environmental Appeals Board.

H. The Herbert Stanley Company now waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in the Complaint, including but not limited to its right under Section 14(a)(3) of FIFRA, 7 U.S.C. § 1361(a)(3), to request a hearing.

I. Each party to this action shall bear its own costs and attorney's fees.

## II. EPA FINDINGS OF FACT

Paragraphs 1 through 23 of the Complaint are incorporated herein by reference as EPA's Findings of Fact in this matter.

## III. EPA CONCLUSIONS OF LAW

EPA asserts that the EPA Findings of Fact in Section II above, constitute violations of FIFRA Section 12(a)(2)(Q), 7 U.S.C. § 136j(a)(2)(Q), for which a civil penalty may be assessed pursuant to FIFRA Section 14(a)(1), 7 U.S.C. § 1361(a)(1).

## IV. CIVIL PENALTY

A. Pursuant to the Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) dated July 2, 1990, and the Enforcement Response Policy for the Good Laboratory Practice (GLP) regulations dated September 30, 1991, the Agency proposed in its Complaint in this case a \$5,000 gravity based civil penalty.

B. For the purposes of settlement, Complainant has agreed to reduce the proposed penalty, as set forth below, to \$4,000. Consistent with the July 2, 1990 Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA has reduced the penalty 20% to reflect the good attitude shown by Respondent in expeditiously negotiating this Consent Agreement. Thus, the final adjusted civil penalty is \$4,000.

## V. TERMS OF SETTLEMENT

A. For payment of the civil penalty in the sum of \$4,000, The Herbert Stanley

Company shall forward a cashier's or certified check, within thirty (30) calendar days of its receipt of the executed Consent Order, payable to the "Treasurer of the United States of America," to the following address:

United States Environmental Protection Agency  
Hearing Clerk  
P.O. Box **360277M**  
Pittsburgh, PA 1525 1

The check should indicate the Docket Number of this case, FIFRA 97-H-05.

B. To ensure a record of compliance with this Consent Agreement, The Herbert Stanley Company shall forward a copy of the check to EPA, in care of

Dr. Brenda F. Mosley  
**Toxics** and Pesticides Enforcement Division (2245-A)  
Office of Regulatory Enforcement  
U.S. Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

C. If The Herbert Stanley Company fails to remit the civil penalty in a timely manner, as described in Paragraphs V. A. and B., The Herbert Stanley Company shall incur a stipulated penalty of \$500.00 per calendar day for the first ten days the penalty is late, and **\$1,000.00** per calendar day for every day thereafter the penalty is late, unless EPA in writing excuses or mitigates the stipulated penalty. EPA will excuse or mitigate the stipulated penalty if EPA determines that the failure to comply occurred despite the exercise of good faith and due diligence by The Herbert Stanley Company. A request to excuse or mitigate a stipulated penalty shall be deemed granted if not denied within 180 days of receipt by EPA.

VI. OTHER MATTERS

A. Nothing in this Consent Agreement and Consent Order shall relieve The Herbert Stanley Company of the duty to comply with all applicable provisions of FIFRA and other environmental laws.

B. This Consent Agreement shall be binding on all Parties to this action, their officers, directors, employees, successors, and assigns. The undersigned representative of each Party to this Consent Agreement certifies that he or she is duly authorized by the Party whom he or she represents to enter into the terms and bind that Party to it.

C. This Consent Agreement is the **full** and complete settlement of all civil claims or civil causes of action between the Parties with respect to the allegations in the Complaint, and shall be binding upon the Parties and in full effect upon the execution of the Consent Order by the EPA Environmental Appeals Board.

D. Failure to pay any civil penalty due under this Consent Agreement in a timely manner pursuant to Paragraph V.A, above, may result in this matter being forwarded to the U.S. Department of Justice for collection of the amount due, plus stipulated penalties and interest at the statutory judgment rate provided for in 28 U.S.C. § 1981, as in effect on the date of signature of the Consent Order.

E. All of the terms and conditions of this Consent Agreement together comprise one agreement, and each of the terms and conditions is in consideration for all of the other terms and conditions. In the event that this Consent Agreement (or one or more of its terms and conditions) is held invalid, or is not executed by all of the signatory parties in identical form, or is not approved in such identical form by the EPA Environmental Appeals Board, then the entire

Consent Agreement shall be null and void.

For Complainant:

\_\_\_\_\_  
**Jesse** Baskerville, Director  
 Toxics and Pesticides Enforcement Division  
 Office of Regulatory Enforcement  
 U.S. Environmental Protection Agency

Date: 8/1/97

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 Dean B. Ziegel, **Attorney**  
 Toxics and Pesticides Enforcement Division  
 Office of Regulatory Enforcement  
 U.S. Environmental Protection Agency

Date: 6/27/97

For Respondent:

\_\_\_\_\_  
**Burnishine** Products Division,  
 The Herbert Stanley Company

Date: 6/10/97

Date: \_\_\_\_\_